

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
LAWRENCE HARDY, RAMONE CROSS, and	:	
SHAWN SMITH, individually and on behalf of all others	:	
similarly situated,		
Plaintiffs,	:	
-against-		08 Civ. 2460 (SHS)
	:	
BRIAN FISCHER, in his capacity as Commissioner of the	:	
New York State Department of Correctional Services	:	
(DOCS), and in his individual capacity; ANTHONY J.	:	
ANNUCCI, in his capacity as Deputy Commissioner and	:	
Counsel for DOCS, and in his individual capacity;		
LUCIEN J. LECLAIRE, JR., former Acting Commissioner	:	
of DOCS in his individual capacity; GLENN S. GOORD,	:	
former Commissioner of DOCS, in his individual capacity,	:	
and JOHN/JANE DOES 1-50 (DOCS Supervisory, Training,	:	
and Policy Personnel),		
Defendants.	:	
	-----X	

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE, that pursuant to Rule 12(b)(1) and (6) and 12(h)(3) of the Federal Rules of Civil Procedure, and upon the Memorandum of Law of Defendants in support of the Motion to Dismiss, and upon all papers and proceedings had herein, Defendants, by their attorney, ANDREW CUOMO, Attorney General of the State of New York, will move before this Court, on a date to be determined by the Court, for an order granting defendants' motion to dismiss on grounds of: (1) the lack of subject matter jurisdiction; (2) qualified immunity; (3) the applicable statutes of limitations; (4) Heck v. Humphrey; (5) the failure to exhaust state and administrative remedies, including those required by the Prison Litigation Reform Act; and (6) the Eleventh Amendment, and for such other and further relief as this Court

may deem just and proper.

Dated: New York, New York
August 1, 2008

Respectfully submitted,

ANDREW CUOMO
Attorney General of the
State of New York
Attorney for Defendants

By:

/S/
Andrew Meier
Assistant Attorney General
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